



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/463,740	06/05/95	VON BORSTEL	1331-143

NIXON AND VANDERHYE  
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12M1/0121

EXAMINER

KUNZ, G

ART UNIT

1211

PAPER NUMBER

13

DATE MAILED: 01/21/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

☒ Responsive to communication(s) filed on 1-8-98

☒ This action is **FINAL**

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 41 and 58-67 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 41 and 58-67 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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Since this application is eligible for the transitional procedure of 37 CFR 1.129(a), and the fee set forth in 37 CFR 1.17(r) has been timely paid, the finality of the previous Office action is hereby withdrawn pursuant to 37 CFR 1.129(a). Applicant's first submission after final filed on has been entered.

Claims 41 and 58 - 67 are pending in the case.

All 35 USC statutes not cited in this Office action can be found cited in full in a previous Office action.

Claims 41 and 58 - 67 stand rejected under 35 USC 103 as being unpatentable over von Borstel et al. in view of Chu et al. for the reasons already of record on pages 2 - 3 of the Office action mailed 4-2-96.

The claims are directed to compositions comprising acylated uridine, cytidine, orotic acid and a uridine phosphorylase inhibitor. Von Borstel et al. discloses compositions comprising acylated uridine or cytidine but does not mention uridine phosphorylase inhibitors. Applicant argues that Chu et al. reference, which discloses compositions of uridine phosphorylase inhibitors, fails to cure this deficiency of von Borstel et al. because Chu et al. uses the phosphorylase inhibitors to potentiate the chemotherapeutic effect of pyrimidine nucleoside analogs, such as 5-fluorouridine, by preventing the degradation of said nucleoside analog. The applicant concludes that the person of ordinary skill in the art at the time of the invention would not have been motivated to combine the teaches of von Borstel et al. and Chu et al. Applicant's argument has been fully considered but is not deemed persuasive. The motivation for combining an acylated

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uridine with a uridine phosphorylase inhibitor is either to inhibit the degradation of the nucleoside analog as taught by Chu et al. by elevating even further the blood and tissue levels of free uridine. Other motivation is also clear: to elevate the blood and tissue levels of free uridine by using two different compounds which act by different and distinct mechanisms. Von Borstel et al. cites numerous therapeutic advantages known in the prior art obtainable when blood and tissue uridine levels are elevated.

No claim is allowed.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.129(a) and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.129(a). Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the submission under 37 CFR 1.129(a). See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire **THREE MONTHS** from the date of this action. In the event a first response is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kunz, whose telephone number is (703) 308-4623. The examiner can normally be reached on Tuesday through Friday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kight, can be reached on (703) 308-0204. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

*Gary L. Kunz*  
GARY L. KUNZ  
PRIMARY EXAMINER  
GROUP 1200

Gary L. Kunz, Ph.D.  
January 15, 1998